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ALEXANDER L. STEVAS,  
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No. 83-524

in the  
**Supreme Court**  
of the  
**United States**

October Term, 1983

WYNMOOR LIMITED PARTNERSHIP and  
WYNMOOR COMMUNITY COUNCIL, INC.,  
*Appellants,*

*vs.*

COCONUT CREEK CABLE T.V., INC.; WYNMOOR  
HOMEOWNERS ASSOCIATION, INC., a Florida  
corporation not for profit; MARTINIQUE II-C  
CONDOMINIUM ASSOCIATION, INC., a Florida  
corporation not for profit; and NORMAN RICHMAN,  
*Appellees.*

On Appeal from the Fourth District  
Court of Appeal for the State of Florida

MOTION TO DISMISS OR AFFIRM

MARK B. SCHORR, ESQ.  
BECKER, POLIAKOFF &  
STREITFELD, P.A.

*Attorneys for Appellees,* WYNMOOR  
HOMEOWNERS ASSOCIATION, INC.,  
MARTINIQUE VILLAGE II-C  
CONDOMINIUM ASSOCIATION, INC.,  
and NORMAN RICHMAN  
6520 North Andrews Avenue  
Post Office Box 9057  
Fort Lauderdale, FL 33310-9057  
Telephone: (305) 776-7550

## **DESIGNATION OF CORPORATE RELATIONSHIPS**

Appellee Martinique Village II-C Condominium Association, Inc., a Florida corporation not for profit, is a Florida Condominium Association. Pursuant to the provisions of the Articles of Incorporation of Appellant Wynmoor Community Council, Inc. (formerly known as Rossmoor Coconut Creek Community Council, Inc.), Appellee Martinique Village II-C Condominium Association, Inc. is the entity entitled to select one representative from its Board of Directors to be a member of Wynmoor Community Council, Inc. The other Condominium Associations in the Wynmoor community likewise comprise the rest of the voting membership of Appellee Wynmoor Community Council, Inc.

By virtue of the Articles of Incorporation of Wynmoor Community Council, Inc., however, Appellant Wynmoor Limited Partnership is entitled to, and does, appoint a majority of the directors of the Council, thereby completely controlling its affairs. This right will terminate on September, 1984, when the Board of Directors of Wynmoor Community Council, Inc. will consist of one director designated by each of the Condominium Associations, including Martinique Village II-C Condominium Associations, Inc.

Appellee Wynmoor Homeowners Association, Inc., is a Florida corporation not for profit. It is neither owned by any parent corporation, has any subsidiary or affiliate corporations, nor has any interrelationship with any other corporate entities.

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corporation not for profit; and NORMAN RICHMAN,  
*Appellees.*

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**MOTION TO DISMISS OR AFFIRM**

Appellees Wynmoor Homeowners Association, Inc.,  
Martinique Village II-C Condominium Association, Inc.,  
and Norman Richman, collectively referred to herein  
as "Appellees/Intervenors", hereby file this their Motion  
to Dismiss or Affirm this appeal.

**STATUTORY PROVISIONS**

The text of the relevant provisions of Fla. Stat.  
§§718.103, .104, .106, and .111 (1981) are set forth in full  
in the Appendix.



## STATEMENT OF THE CASE

This case involves a condominium developer, one of the Appellants herein (whose affiliate happens to be in the cable television business) attempting to keep the operator of another cable television business, Appellee Coconut Creek Cable T.V., Inc., from contacting people to whom the Developer has sold condominium units (Appellees/Intervenors), simply because that second cable television operator is a competitor of the Developer's affiliate. As will be shown herein, neither Appellant has ever raised any reason why that second cable television operator should be prohibited from competing with the Developer's affiliate.

Appellants' recitation of the procedural history of this case, contained in the "Jurisdictional Grounds" section of their Jurisdictional Statement, is basically accurate. Appellants' description of the facts and issues in this case, however, as contained in their Statement of the Case, both contradicts almost all of the trial court's Final Judgment and Decree, *App.* 1-14,<sup>1</sup> and is woefully incomplete. Their description of the factual setting of this case is consistent: throughout these proceedings, they have conveniently ignored both the fact that this case involves a condominium community, and the very provisions of the condominium documents which encumber the entire community as covenants running with the land. Fla. Stat. §718.104(7) (1981).

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<sup>1</sup>"*App.* \_\_\_\_" refers to the Appendix attached to Appellants' Jurisdictional Statement.

<sup>2</sup>"*I. App.* \_\_\_\_" refers to the Appendix attached to this Motion to Dismiss or Affirm.

The statute at issue, Fla. Stat. §718.1232 (1981), is a section of the Florida Condominium Act, Chapter 718, Florida Statutes.

The Final Judgment and Decree does not discuss the nature of condominiums, or unit owners' and condominium associations' property rights, as they are well understood in a state where over 20% of the population lives in condominium housing.

Under Florida law, "condominium" means that form of ownership of real property which is created pursuant to the provisions of Chapter 718, Florida Statutes, and which is comprised of individually owned units, and there is, appurtenant to each unit, an undivided share in common elements. Fla. Stat. §718.103(9) (1981).

"Condominium property" means the land subject to condominium ownership, and all easements and rights appurtenant thereto intended for use in connection with the condominium. Fla. Stat. §718.103(11) (1981). A condominium "unit" is a part of the condominium property subject to exclusive ownership. Fla. Stat. §718.103(16) (1981). "Common elements" is that part of the condominium property not included in the units. Fla. Stat. §718.103(6) (1981). A "condominium parcel". i.e., the unit plus any appurtenances thereto and an undivided share of the common elements, is a separate parcel of real property. Fla. Stat. §718.106(1) (1981).

A condominium is created by the filing of a declaration of condominium, pursuant to the requirements of Fla. Stat. §718.104 (1981). The declaration may also contain additional covenants, rights and restrictions, either within the declaration itself, or in exhibits attached

thereto. All of such exhibits become a part of the declaration of condominium, as if fully set forth therein. *E.g., Waterford Point Condominium Apartments, Inc. v. Fass*, 402 So.2d 1327 (Fla. 4th DCA 1981), *rev. denied*, 412 So.2d 465 (Fla. 1982). All provisions of a declaration, or its exhibits, are enforceable equitable servitudes, and covenants running with the land. Fla. Stat. §718.104(7) (1981). As used herein, "condominium documents" means a declaration of condominium, and all exhibits thereto.

A condominium "association" is the corporate entity responsible for the operation and management of a condominium. Fla. Stat. §§718.103(2), 718.111 (1981).

A brief description of some of the players in the cast of characters will help to put this case in perspective.

Appellee Coconut Creek Cable T.V., Inc., is a cable television company which holds a municipal franchise from the city in which Wynmoor Village is located. Appellee Martinique Village II-C Condominium Association, Inc. (herein "Appellee/Association") is one of 39 separate Condominium Associations existing within the Wynmoor Village community.

Appellant Wynmoor Community Council, Inc. (herein "Appellant/Council"), formerly known as Rossmoor Coconut Creek Community Council, Inc., was created by Appellant/Developer's predecessor. Its Board of Directors is still controlled by the Developer, although unit owners other than the Developer, through their respective Condominium Associations, are entitled to elect a majority of the Board of Directors in September, 1984, pursuant to the provisions of the Articles of Incorporation of the Council. *I.App. \_\_\_\_*.

Appellant Developer, and its predecessor, in creating each of the condominiums in the Wynmoor Village community, attached as exhibits to each declaration an Agreement for Use and Conveyance between itself and Council (*I.App.* 12-15), and the Articles of Incorporation of Appellant Council (*I.App.* 16-19).

The property at issue in this case is the main entranceway and gatehouse, and the arterial roadways in the Wynmoor Village community. The Final Judgment and Decree construed the various condominium documents encumbering the roadways, and found that:

No matter who holds legal title to such roadways, now or in the future, it is clear from the evidence that the Wynmoor roads exist for the use and benefit of the Wynmoor condominium unit owners and residents, and those who service them, as well as for the use and benefit of the developer during the period of development. Plaintiff is entitled to pass over and make reasonable use of such roadways in providing its services to Wynmoor residents.

*App.* 7. This finding was based on the provisions of the various condominium documents introduced into evidence, including the Agreement for Use and Conveyance. Relevant portions of same are contained in the Appendix to this Motion. (*I.App.* 12-28). While there was a dispute regarding whether or not title to the gatehouse and roadways had already been conveyed from Developer to Council, it was not disputed that the gate and roadways are encumbered by provisions of the Agreement for Use and Conveyance granting the unit owners the rights described in the Final Judgment.

It was not disputed that Developer must relinquish "control" of the Council by September, 1984, must convey title to the roadways to Council by December, 1984, and that Council exists for the purpose of operating the roadways for the benefit of the unit owners, and, upon acquiring title to them, to hold the roadways in trust for its unit owner members.

Contrary to the footnote on page 6 of Appellants' Jurisdictional Statement, the trial court specifically allowed Appellees/Intervenors to raise this issue, denying a motion to strike the following avoidance to the Appellants' defense of an unconstitutional "taking":

Defendant/DEVELOPER has no standing to assert these property rights on its own, unilaterally, as the property rights to the areas within the community which are not within the boundaries of the various Condominiums are held in common by all unit owners in Wynmoor Village, not just Defendant/DEVELOPER; or, the property rights asserted are in the common elements of the various Condominiums within Wynmoor Village, including MARTINIQUE II-C, in which Defendant/DEVELOPER has no interest.

Thus, Appellants' standing to raise the asserted property rights, and the very nature of those rights, were always in issue, and were, in fact, adjudicated by the construction of the condominium documents in the Final Judgment and Decree. *App.* 7.

The Final Judgment and Decree, *App.* 1-14, accurately summarizes the case. As it recites, Appellee

Coconut Creek Cable T.V., Inc. premised its right of entry on three grounds: the common law, the municipal franchise, and the subject Statute. Appellant Coconut Creek Cable T.V., Inc. did not get all the relief it sought in its Complaint, as the trial judge never reached the issue of its right to lay cable in any particular place.

The Final Judgment concludes that Appellee Coconut Creek Cable T.V., Inc. has the right to enter Wynmoor Village, to solicit potential customers, and to survey the development for the purpose of planning the design and installation of the system. It found the right of access to be supported by *both* the municipal franchise and the statute. With respect to the Appellants' defenses, the Final Judgment found no justification for barring access, made no finding on title to the roadways, and did not reach the many constitutional issues raised by Appellants, finding a lack of standing to raise same, anyway, based on the evidence. The Court further found that the Statute, by its terms and under the facts of the case, did not result in a taking of any of Appellants' property.

### **MOTION TO DISMISS FOR LACK OF JURISDICTION**

This appeal should be dismissed for lack of jurisdiction, on one or all of the following grounds:

1. The federal question was not actually decided by the appellate court.
2. The decision appealed from rests on adequate non-federal grounds.
3. Appellants lack sufficient standing to raise the federal question.



4. Insofar as the asserted federal question is concerned, the decision is not final.

#### The Federal Question Was Not Actually Decided.

What was actually decided by the District Court of Appeal, which affirmed the Final Judgment and Decree without opinion? One can only guess; in Florida, a "per curiam affirmance" stands for nothing. There is no presumption the decision was on the merits, and the rationale and basis for the decision is always subject to speculation: there is no limit to the grounds which may prompt a "PCA". *Department of Legal Affairs v. District Court of Appeal, 5th District*, 434 So.2d 310 (Fla. 1983).

Some basic principles of appellate review lead to the conclusion that the appellate court did not pass on the constitutionality of the Statute. First, Florida courts do not determine constitutional questions if the case may be decided on other grounds. *E.g., Century Village, Inc. v. Wellington E. F, K, L, H, J, M & G Condominium Association*, 361 So.2d 128 (Fla. 1978) (involving another developer subsidiary of Cenville Development Corp.). Second, appellate courts do not decide unripe issues, not involving an actual controversy and unrelated to a specific factual situation, *Hoffman v. Jones*, 280 So.2d 431 (Fla. 1973), nor will the courts pass on matters which are contingent, uncertain, or which rest in the future. *State ex rel. Florida Bank & Trust Co. v. White*, 155 Fla. 591, 21 So.2d 213 (1945).

Therefore, Appellants' assertion that the instant federal question was actually decided is merely speculation.

## **The Final Judgment and Decree Rests on Adequate Non-federal Grounds.**

All that was adjudged in the Final Judgment was that Appellee Coconut Creek Cable T.V., Inc. may enter the front gate of Wynmoor Village and solicit customers and survey the "lay of the land" to determine where to place its cable. The Final Judgment expressly rests on *both* the Statute and the municipal franchise. The franchise alone, therefore, is adequate basis for the actual judgment.

There was no constitutional ruling for the appellate court to review, of course. The Final Judgment and Decree expressly did not reach the various constitutional issues, except to find that the Statute, on its face and as applied, has not resulted in a taking of Appellants' property. A mere threat or possibility does not rise to the level of an actual taking entitling even an undisputed property owner to just compensation. *Dade County v. Still*, 377 So.2d 689 (Fla. 1979); *City of Miami v. Romer*, 73 So.2d 285 (Fla. 1954).

Therefore, since the highest court of the state delivered no opinion, and it appears that the judgment might have rested on a non-federal ground, this Court lacks jurisdiction to review the affirmance of the Final Judgment and Decree. *Stembridge v. Georgia*, 343 U.S. 541 (1952); *Cramp v. Board of Public Instruction of Orange County, Florida*, 368 U.S. 278 (1961); *see, Jankovich v. Indiana Toll Road Commission*, 379 U.S. 487 (1965).



### **Appellants Lack Standing to Raise the Asserted Constitutional Issue.**

The Final Judgment and Decree found no taking has occurred. Appellants have neither sustained, nor are in immediate danger of sustaining, any taking of their property. Indeed, if Appellant/ Developer honors the Agreement for Use and Conveyance, then by 1984 it will not even have legal title to the gatehouse and roadways. The Final Judgment and Decree expressly holds that Appellants failed to demonstrate proper standing. This ruling is supported by the findings in the Final Judgment that there was nothing before the Court to show that the roadways at issue would ever be used by Appellee Coconut Creek Cable T.V., Inc., and that the issue, "indeed, may not, as a practical matter, ever present an actual problem". App. 10.

Therefore, this appeal should be dismissed as Appellants lack standing to raise the federal question. *Cramp v. Board of Public Instruction of Orange County, Florida*, *supra*; *Commonwealth of Massachusetts, v. Mellon*, 262 U.S. 447 (1923); *see, Tileston v. Ullman*, 318 U.S. 44 (1943).

### **Insofar As The Asserted Federal Question Is Concerned, The Decision Is Not Final.**

By the terms of the Final Judgment and Decree, Appellants are not precluded from raising their arguments *when and if* Appellee Coconut Creek Cable T.V., Inc. attempts to use any of the roadways for the purpose of laying cable. As it recites,

Accordingly, by this final decree the court does not rule upon the issue of the availability or non-availability, in whole or in part, to plaintiff of any particular easement or right-of-way within Wynmoor. Such specifics are not now before the court, and indeed, may not, as a practical matter ever present an actual problem. Those issues will arise, if at all, only after plaintiff has been granted the right of entry and has had the opportunity to plan a design for its system following discussions with unit owners and their associations and, perhaps, with the developer and the WYNMOOR COMMUNITY COUNCIL. In like manner, the Court by this final decree does not address the issue of whether plaintiff must be allowed or can be compelled to install any particular cable television system within Wynmoor or any part of Wynmoor. Such matter, should the same become a legal problem at all, will depend upon subsequent events.

*App.* 10-11. The actual decree, therefore, provided:

This Court reserves jurisdiction over this cause and the parties hereto for the purpose of making such determinations and taking such actions as may be judicially appropriate to assure meaningful access between plaintiff and the unit owners of Wynmoor consistent with Sections 718.1232, Florida Statutes, and the terms of this Final Judgment and Decree.

App. 13.

The Final Judgment and Decree, even if construed to authorize in the abstract the use of the arterial roadways for the laying of cable, finds that no actual use of the roads has yet occurred, and reserves jurisdiction for consideration of those issues when and if they arise. Thus, even if Appellants' argument that a "taking" has occurred is accepted, it is clear that the issue of just compensation for that taking has not been dealt with. In such a case, the decision is not final, because

The federal constitutional question embraces not only a taking, but a taking on payment of just compensation. A state judgment is not final unless it covers both aspects of that integral problem.

*San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 634 (1981); *North Dakota Board of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 163 (1973). Clearly, the contemplated further proceedings on both the factual issue of a taking which has not yet occurred, and on the question of compensation, makes this judgment non-final for the purposes of this Court's jurisdiction. *San Diego Gas & Electric Co., supra*.

The Final Judgment and Decree does not decide anything which is conclusive of the outcome of the further proceedings which are contemplated. While it determines that the unit owners are entitled to be serviced by Appellee Coconut Creek Cable T.V., Inc., its refusal to reach the specific constitutional issue clearly leaves the issue open for full consideration. Certainly, should one of the roadways be actually utilized,

the outcome of further proceedings on the taking question is not preordained. Instead, the issue expressly survives, and will be open for review should Appellants not be satisfied with the result.

The refusal to reach the constitutional issue guarantees Appellants' right to raise this issue in the future, should a taking occur. *Id.*; *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120 (1945); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

Therefore, the decision is not reviewable, as it is not a final judgment within the meaning of 28 U.S.C.A. §1257(2).

### MOTION TO AFFIRM

Should this Court decide it has jurisdiction to entertain this appeal, summary affirmance is still clearly called for.

As discussed, *supra*, in connection with the Motion to Dismiss, no taking has occurred. There has not even been a temporary invasion of Appellants' property rights, even by allowing representatives of Coconut Creek Cable on the roadways. This is because Appellants' property rights are subject to the rights of the unit owners in the roadways, as found by the Final Judgment and Decree.

Appellants' reliance on *Loretto v. Teleprompter Manhattan CATV Corp.*, \_\_\_\_ U.S. \_\_\_\_, 102 S.Ct. 3164 (1982) proceeds from a faulty assumption. Wynmoor Village is not the Developer's property, nor is it the

property of its cable television affiliate. Wynmoor Village is a community of condominiums, with certain portions (the arterial roads and front gate) available for the use and benefit of all unit owners. Appellants are correct in stating on page 10 of their Jurisdictional Statement that the issue is a private landowner's right to exclude. The defect in Appellants' reasoning is simple: Appellants are not really the landowners, the unit owners are.

In short, Appellants' property rights are so limited, they lack the standing to question even a potential taking. They are missing a number of "sticks" in the typical fee simple owner's "bundle of rights".

It is undisputed that all of the condominiums, both the units and common elements thereof, are separate parcels of real property. The Developer does not own any of this property once it has sold the units. The only property to which Developer or Council hold legal title is the arterial roadways and gatehouse. That title, however, is subject to encumbrances which create significant property rights in the unit owners. The Developer's property rights do not include the ability to exclude Coconut Creek Cable T.V., Inc. from Wynmoor Village, regardless of the existence of Fla. Stat. §718.1232 (1981). The trial court was correct in finding no standing to raise this issue.

From the inception of Wynmoor Village, the roadways existed for the use and benefit of the unit owners to whose property they lead; and, the Developer later committed itself to convey those roadways to the Council, which also exists for the benefit of the unit owners.

Neither the Council, nor the Developer, has the right to deny access to an invitee of a unit owner. Rather than either of the Appellants having property rights which are abrogated by the Statute, they have, instead, misused what powers they do retain over the roads, contrary to the rights they expressly gave the unit owners in those roads. The trial court's finding that the roadways exist for the "use and benefit of the unit owners" is supported by substantial competent evidence, and the trial court did not err in finding no abrogation of property rights has occurred.

Appellants' reliance on *Loretto, supra*, is misplaced. It is Appellees/Intervenors who stand in Mrs. Loretto's shoes. The trial court was eminently correct in noting that there is a difference between a rental apartment building and a condominium. For starters, condominium unit owners are not the Developer's tenants.

Indeed, while Developer retains certain rights in the roadways (for access to areas still under construction and sale), it is conceivable that, by the time any "permanent physical occupation" of the roadways takes place, the Developer will have become obligated to convey legal title to the Council. Certainly, since the unit owners will control the Council in September, 1984, the Developer will not even have the ability to refuse entry to Coconut Creek Cable T.V., Inc., as it has done.

Indeed, all the state courts have been confronted with is a potential physical occupation of land. While the occupation, when and if it occurs, will be permanent, the land being so occupied will not permanently be the complaining record title holder's property. Instead, the



land will be owned by the members of the Council, the very people to whom access is sought.

Accordingly, since the Developer will not be the permanent owner of the roads, it cannot assert an unconstitutional permanent occupation of that property. Further, it is clear that Appellant Council's objections to the potential permanent occupation of the roads was made not on behalf of its members (Appellees/Intervenors) but instead on behalf of the Developer.

The issue is the right to exclude. The problem with Appellants' case is that they do not have the right to exclude Coconut Creek Cable T.V., Inc., even under the common law, by virtue of the provisions of the condominium documents which they themselves drafted.

Appellants' reliance on *Kaiser Aetna v. United States*, 444 U.S. 164 (1979) is similarly misplaced. Again, besides lacking standing, Appellants are not fee simple absolute property owners such as the owner of the marina in that case. Again, if there is any analogy to the instant case, it escapes Appellees/Intervenors, as it is the Intervenors who are the property owners here.

The buildings to which any cable television lines will run are owned by the unit owners, not the Appellants. It is the unit owners who own the equivalent of the marina in *Kaiser Aetna*, *supra*. The Appellants, if an analogy to the cases they rely on is possible, hold title to the equivalent of the sidewalk in front of the *Loretto* apartment building, or some land in the front of the *Kaiser Aetna* harbor, to which the adjacent property owners (the unit owners) must pass in order to gain access to their property.

The rational basis behind the Statute is self-evident, and reinforced by the very existence of this case. This section of the Condominium Act is designed to give residents of condominium units a choice of cable television service, and to prevent developers who decide to also go into the cable television business from denying condominium residents the right to deal with their competition.

This case is a perfect example of the kind of condominium developer abuse the Statute was enacted to prevent. The history of condominium development in Florida is replete with examples of developers abusing and perverting the condominium concept of fee simple ownership, by retaining economic interests of one form or another in the condominiums they have supposedly sold to unit owners. *E.g.*, *Miller v. Granados*, 529 F.2d 393 (5th Cir. 1976); *Imperial Point Colonnades Condominium, Inc. v. Mangurian*, 549 F.2d 1029 (5th Cir.), *cert. denied*, *sub nom Mangurian v. Thompson*, 434 U.S. 859 (1977); *Point East Management Corp. v. Point East One Condominium Corp.*, 282 So.2d 628 (Fla. 1973), *cert. denied*, 415 U.S. 921 (1974); *Steinhardt v. Rudolph*, 422 So.2d 884 (Fla. 3d DCA 1982), *rev. denied*, 434 So.2d 889 (Fla. 1983); *Cole v. Angora Enterprises, Inc.*, 403 So.2d 1010 (Fla. 4th DCA 1981), *aff'd with opinion*, \_\_\_\_ So.2d \_\_\_\_, 8 FLW SCO 206 (Fla. 1983). Appellants' assertion of constitutional rights in the gatehouse and roadways, and their attempt to treat the unit owners as their tenants or serfs, presents not a property right deserving of constitutional protection, but rather, a grasping at a few thin strands in the unit owners' bundle of rights.



It is noteworthy that this statute is included as part of the Condominium Act, as opposed to being codified elsewhere in the Florida Statutes. For once, the Legislature has seen an abuse developing, and acted quickly to correct it. While this statute also serves the legitimate police power of eliminating conditions which inhibit the development of cable television, it serves the more important purpose of preserving condominium unit owners' ability to take part in the market place for goods and services without the handicap of perpetual (or in this case, 20-year) restraints imposed by the Developer.

Accordingly, should this Court decide to take jurisdiction of this appeal, it should summarily affirm the decisions below.

## CONCLUSION

Based on the foregoing, the instant appeal should be dismissed for lack of jurisdiction. Alternatively, the decisions of the state courts should be summarily affirmed.

Respectfully submitted,

MARK B. SCHORR, ESQ.  
BECKER, POLIAKOFF &  
STREITFELD, P.A.

*Attorneys for Appellees/  
Intervenors*

6520 North Andrews Avenue  
Fort Lauderdale, FL 33310-9057  
(Area 305) 776-7550 (BROWARD)  
944-2926 (DADE) 732-0903 (WPB)

Mark B. Schorr

BY

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MARK B. SCHORR

## **Appendix**

PORTIONS OF FLORIDA STATUTES

CHAPTER 718

CONDOMINIUMS

PART I GENERAL PROVISIONS (ss. 718.101-718.126)

PART II RIGHTS AND OBLIGATIONS OF DEVELOPERS  
(ss. 718.201-718.203)

PART III RIGHTS AND OBLIGATIONS OF ASSOCIATION  
(ss. 718.301-718.304)

PART IV SPECIAL TYPES OF CONDOMINIUMS  
(ss. 718.401-718.403)

PART V REGULATION AND DISCLOSURE PRIOR TO SALE  
OF RESIDENTIAL CONDOMINIUMS (ss. 718.501-718.509)

PART VI CONVERSIONS TO CONDOMINIUM  
(ss. 718.604-718.622)

**s. 718.101 Short title.** This chapter shall be known and may be cited as the "Condominium Act."

**s. 718.102 Purposes.** The purpose of this chapter is:

(1) To give statutory recognition to the condominium form of ownership of real property.

(2) To establish procedures for the creation, sale, and operation of condominiums. Every condominium created and existing in this state shall be subject to the provisions of this chapter.

**s. 718.103 Definitions.** As used in this chapter:

. . .

(2) "Association" means the corporate entity responsible for the operation of a condominium.

. . .

(6) "Common elements" means the portions of the condominium property not included in the units.

. . .

(9) "Condominium" means that form of ownership of real property which is created pursuant to the provisions of this chapter and which is comprised of units that may

be owned by one or more persons, and there is, appurtenant to each unit, an undivided share in common elements.

10) "Condominium parcel" means a unit, together with the undivided share in the common elements which is appurtenant to the unit.

(11) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(12) "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

. . .

(16) "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

. . .

**s. 718.104 Creation of condominiums; contents of declaration.** Every condominium created in Florida shall be created pursuant to this chapter.

(1) A condominium may be created on land owned in fee simple or held under a lease complying with the provisions of s. 718.401.

(2) A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with requirements for a deed. All persons having record title to the interest in the land being submitted to condominium ownership, or

their lawfully authorized agents, must join in the execution of the declaration.

. . .

(4) The declaration must contain or provide for the following matters:

(a) A statement submitting the property to condominium ownership.

(b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium."

(c) The legal description of the land and, if a leasehold estate is submitted to condominium, an identification of the lease.

(d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.



(e) A survey of the land and a graphic description of the improvements in which units are located and a plot plan thereof that, together with the declaration, are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions....

. . .

(h) The name of the association, which must be a corporation for profit or a corporation not for profit.

. . .

(j) The document or documents creating the association, which may be attached as an exhibit.

(k) A copy of the bylaws, which may be attached as an exhibit. Defects or omissions in the bylaws shall not affect the validity of the condominium or title to the condominium parcels.

(1) Other desired provisions not inconsistent with this chapter.

(m) The creation of a nonexclusive easement for ingress and egress over streets, walks, and other rights-of-way serving the units of a condominium, as part of the common elements necessary to provide reasonable access to the public ways, or a dedication of the streets, walks, and other rights-of-way to the public.

. . .

(5) The declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer

of units.

(6) A person who joins in, or consents to the execution of, a declaration subjects his interest in the condominium property to the provisions of the declaration.

(7) All provisions of the declaration are enforceable equitable servitudes, run with the land, and are effective until the condominium is terminated.

. . .

**s. 718.106 Condominium parcels; appurtenances; possession and enjoyment.**

(1) A condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold.

(2) There shall pass with a unit, as appurtenances thereto:

(a) An undivided share in the common elements and common surplus.

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration.

(c) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(d) Other appurtenances as may be provided in the declaration.

(3) A unit owner is entitled to the exclusive possession of his unit, subject to the provisions of s. 718.111(5). He shall be entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners.

. . .

**s. 718.111 The association.**

(1) The operation of the condominium shall be by the association, which must be a corporation for profit or a corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. An association may operate more than one condominium.

(2) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property.

. . .

(3) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(4) The powers and duties of the association include those set forth in this section and those set forth in the declaration and bylaws, if not inconsistent with this chapter.

. . .

## AGREEMENT FOR USE AND CONVEYANCE

This Agreement entered into the 16th day of September, 1974, between ROSSMOOR FLORIDA LIMITED PARTNERSHIP, a New York Limited Partnership, qualified to do business in the State of Florida, hereinafter called the "Developer" and ROSSMOOR COCONUT CREEK COMMUNITY COUNCIL, INC., a corporation not for profit under the laws of the State of Florida, hereinafter called the "Council";

### W I T N E S S E T H:

1. Upon the terms and conditions herein set forth and in consideration of Council's agreement to maintain, repair, insure, pay for taxes and to otherwise bear all expenses of the management, operation, use and Developer's ownership of the properties covered by this Agreement, and in consideration of the prompt and continuous performance by the Council of each and every of its

covenants and agreements herein made to be kept, the Developer hereby agrees to permit the Council, its members and their guests and invitees the non-exclusive and regular use of the properties which from time to time are brought under the provisions of this Agreement as hereinafter provided.

. . .

3. Community Council Properties.

The Council is a non-profit corporation formed pursuant to laws of the State of Florida for the purpose of operating and managing the community and recreational facilities for members of the Council. The Council has entered into this Agreement to make available the Community Council Properties for the recreation, leisure time activity, health, use, benefit and enjoyment of the members of the Council



during the term of this Agreement.

. . .

c. Each Unit Owner shall have the right to use, occupy and enjoy the Community Council Properties through this Agreement, subject to all of the provisions of this Agreement, the Articles of Incorporation and the By-Laws of the Council, and such rules and regulations which the Council may from time to time adopt.

d. Use of the Community Council Properties shall be subject to all laws, statutes, ordinances, rules and regulations of all appropriate governmental authorities, and to the rules and regulations of the National Board of Fire Underwriters, or in the event it shall terminate its present functions, then of any other body exercising similar functions.

. . .

22. Developer's Right to Change and Modify Schedule "A". Developer retains the right in its sole and absolute discretion, throughout the term of this Agreement or any extension thereof to add to, subtract from or change the boundries of, the lands described in Schedule "A", excepting only as to properties which are improved or constructed or are being improved or constructed as of the date of this Agreement. Such change or modification shall be effective upon Developer's giving written notice of same to the Council.

## ARTICLES OF INCORPORATION

OF

ROSSMOOR COCONUT CREEK COMMUNITY COUNCIL, INC.

The undersigned do hereby associate themselves for the purpose of forming a corporation not for profit. Pursuant to the provisions and laws of the State of Florida, we certify as follows:

. . .

### 2. PURPOSE

The purpose for which the Council is organized is to provide an entity for the operation of The Community Council Properties as defined in the Declaration of Condominiums within the Development set forth in Exhibit "G" attached to and made a part of the Declaration of Condominium of ROSSMOOR BAHAMA VILLAGE, a condominium, and pursuant to the provisions of the

Condominium Act.

### 3. POWERS

The powers of the Council shall include and be governed by the following provisions:

. . .

3.3 All funds and the titles to all properties acquired by the Council, and their proceeds, shall be held in trust for the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation, and the By-Laws of the Council.

3.4 The powers of the Council shall be subject to and shall be exercised in accordance with the provisions of the Declaration of Condominium and the By-Laws of the Council.

### 4. MEMBERSHIP

4.1 The membership of the Council shall be Directors comprising one (1)

representative from the Board of Directors of each Association formed to govern each Condominium in the total Development pursuant to Exhibit "G" attached hereto and as may be modified from time to time by ROSSMOOR FLORIDA LIMITED PARTNERSHIP, hereinafter referred to as "Developer". The record Owners of all Units in each Condominium comprising the Development shall be non-voting members for the purpose of enjoyment of all facilities located on the Community Council Properties.

. . .

#### 8. DIRECTORS

. . .

H. In the event that Developer still has the right to elect a majority of the Directors in accordance with the above provisions after ten (10) years of the recording of the Declaration of

Rossmoor Bahama Village, Developer shall thereupon agree to election of Directors as hereinafter set forth in Paragraph 8.3. Further, Developer shall have the right to terminate its right to elect a majority of the Directors at any time.

. . .

8.3 At such time as Developer has closed the sales of all the units in the various condominiums comprising the Development, or upon the date ten (10) years hence from the recording of the Declaration of Condominium of Rossmoor Bahama Village, or upon the Developer's voluntary termination of its right to elect a majority of the Directors, whichever comes first, the Directors of the Council shall constitute one (1) member of the Board of Directors of each of the constituent Associations within the Development.

DECLARATION OF CONDOMINIUM

OF

\_\_\_\_\_ CONDOMINIUM

WYNMOOR LIMITED PARTNERSHIP, a New York Limited Partnership, authorized to do business in Florida, being the owner of record of the fee simple title to the real property situate, lying and being in Broward County, Florida, as more particularly described in the Survey Exhibit attached hereto as EXHIBIT 1, which is incorporated herein by reference, does hereby state and declare that said realty, together with improvements thereon, is submitted to condominium ownership pursuant to the CONDOMINIUM ACT of the State of Florida (F.S. 718, et. seq.) and does hereby file this DECLARATION OF CONDOMINIUM.

. . .

3. DEFINITION OF TERMS. The terms used in this DECLARATION and the EXHIBITS attached hereto shall have the meanings stated in the CONDOMINIUM ACT. (Sec. 718.101, Fla. Stat., 1977) and as follows, unless the context otherwise requires.

. . .

3.19 "SPONSOR" means WYNMOOR LIMITED PARTNERSHIP, a New York Limited Partnership authorized to do business in Florida, its successors and assigns, who have created this CONDOMINIUM.

. . .

3.23 "COUNCIL" means and refers to WYNMOOR COMMUNITY COUNCIL, INC.

3.24 "COUNCIL PROPERTIES" means and refers to all properties conveyed to, or to be conveyed to, the COUNCIL including but not limited to recreational facilities and community services and facilities,



including "COMMUNITY SERVICES AND FACILITIES."

. . .

3.26 "COMMUNITY SERVICES AND FACILITIES"

means those areas and the improvements thereon which the SPONSOR or ASSOCIATION so designates and either conveys to the COUNCIL or designates the responsibility for the maintenance or operation thereof to the COUNCIL. It is the intention of this definition to include therein certain facilities supplied for the benefit of the residents of that certain development known as WYNMOOR VILLAGE, Coconut Creek, Florida, which may include, for the purpose of illustration, but not be limited to, the providing of a security system, internal and external transportation system, maintenance of main roads, drainage and lake systems, lighting systems, swales, sales, entrance ways and providing certain utility services

within the development.

. . .

## 6. EASEMENTS.

. . .

6.6 ACCESS. SPONSOR and COUNCIL covenant to provide, either by way of perpetual private easements or publicly dedicated right of way, access to the CONDOMINIUM for ingress and egress to one of the major entrances and exits to WYNMOOR VILLAGE, Coconut Creek, Florida.

. . .

18. TRANSFER OF COUNCIL PROPERTIES TO COUNCIL. It is understood and agreed that the COUNCIL PROPERTIES will be transferred from the SPONSOR by the COUNCIL for the benefit of this and all other CONDOMINIUM ASSOCIATIONS now or to be located in WYNMOOR VILLAGE and for the benefit of all UNIT OWNER members of the ASSOCIATION and COUNCIL,

all pursuant to the provisions of the COUNCIL DOCUMENTS and any amendments thereto and revisions thereof as agreed upon between the COUNCIL, SPONSOR and if the same materially affect this ASSOCIATION then by this ASSOCIATION.

. . .

PORTIONS OF FLORIDA  
OFFERING CIRCULAR FOR  
MARTINIQUE II-C CONDOMINIUM

. . .

(e.11) There are land and facilities for use by UNIT OWNERS which are or will be owned by WYNMOOR COMMUNITY COUNCIL, INC., which are provided for the use of the UNIT OWNERS under the terms and conditions of the COUNCIL DOCUMENTS. The facilities to be provided thereunder are those items designated in the discretion of the COUNCIL to serve the WYNMOOR VILLAGE community as a whole and may include, but not be limited to:

. . .

(3) Roadways and Lighting Systems thereon.

(4) Security Services

. . .

(e.19) Description of Council Facilities  
(COUNCIL PROPERTIES):

A. In accordance with the COUNCIL PROPERTIES - Club Concept described in Paragraph (e.11) of this Offering Circular there are recreational and other commonly used facilities that will be used in common with other condominiums and their members and which require the payment of maintenance and expenses by UNIT OWNERS.

B. The facilities are described as follows:

. . .

(10) Road and Lighting Systems: Private internal roads and lighting systems for such roadways.

(11) Security System: 24-hour manned gatehouse and one 24-hour mobile road patrol covering the project in its entirety. The primary responsibility of such system

is guardhouse clearance and contacting the appropriate law enforcement authorities as the need arises.

C. Statement of Ownership. The facilities set forth above are currently owned by the SPONSOR and operated by the COUNCIL under the provisions of the COUNCIL DOCUMENTS (EXHIBIT 3 to this Offering Circular). However, such facilities are committed, as set forth therein, to be conveyed at various times by the SPONSOR to the COUNCIL. The COUNCIL has the power to add to, diminish, alter and otherwise modify the COUNCIL PROPERTIES and services offered by the COUNCIL as the COUNCIL deems appropriate. For a certain period of time the SPONSOR or people affiliated with the SPONSOR have the majority of voting rights of the governing board of

the COUNCIL. Thereafter, the COUNCIL  
will be controlled by the members . . .